

**SACRAMENTO POLICE DEPARTMENT
ADMINISTRATIVE PENALTY APPEAL HEARING
RECORD OF DECISION**

IN THE MATTER OF:

SPD REPORT #: 17-322928

OWNER/APPELLANT: Evergreen SF 88 LLC/Sam Chu

VIOLATION ADDRESS: 3855 Shining Star Drive APN: 049-0450-037-0000

SACRAMENTO CITY CODE SECTION(S): 8.132.040

PROPOSED FEE OR PENALTY: Administrative Penalty \$83,000

HEARING EXAMINER: Richard Shafer

HEARING DATE: February 28, 2018

This matter was heard at a noticed public hearing. The following witnesses submitted a written explanation, appeared and/or testified at the hearing on behalf of either the City or the Appellant as noted below. Any written materials submitted with the protest or at the hearing were reviewed by the Hearing Examiner and are on file in the offices of the City of Sacramento.

City Staff: Officer Kelli Streich – Sacramento Police Department

Appellants: Sam Chu, Jenny Lin & Jin Xiu – Property Owners

Aaron Lee – Local Agent

TESTIMONY SUMMARY

City Staff:

Sacramento Police Department Officer Kelli Streich testified the Sacramento Police Department received information regarding a possible indoor cannabis cultivation operation and power theft occurring at 3855 Shining Star Drive, owned by Evergreen SF 88, LLC.

On November 9, 2017, the City executed a warrant on the property and observed 172 cannabis plants. Officer Streich stated there were two rooms that were dedicated grow rooms and a room that was used for drying the marijuana. Both growing rooms were sophisticated operations that included raised platforms for the plants to be grown on, timers for cycling of lights, high intensity grow lights, and CO2 generators attached to propane tanks. The drying room had several small plants growing in the closet, and had several rows of strings strung from wall to wall to dry harvested marijuana. This residence appeared to be occupied by two adults and a small child, based on the furniture and clothing that was located inside of the residence.

Officer Streich testified SMUD inspectors located an electrical meter bypass in the living room of the residence. The residents had removed the sheet rock from the interior wall of the living room and connected 3 insulation piercing connectors to the electrical line, prior to the electrical meters. They were then able to use power off the electrical line without it being metered. SMUD investigators suspect a minimum of approximately \$24,173 in utility services has been stolen since the start of service in October 2015.

On scene, there were approximately 6 City personnel and 6 City vehicles. Personnel were on scene for approximately 3 hours, from the time the property was entered to the time the property was secured, boarded and declared as a dangerous building. Photos were taken of the marijuana growing facility.

An administrative penalty pursuant to SCC 8.132.050 (E)(1) in the amount of \$83,000, \$500 per plant over six plants, was issued to the owner of the property for a violation of SCC 8.132.040(B). The administrative citation was left in the kitchen of the residence. The City Attorney also mailed a copy of the administrative penalty to the property owner. The administrative penalty in this case is appropriate due to the potential high proceeds to be gained from the cultivation of illegal cannabis.

Appellant:

Property owner Sam Chu testified the property is a rental and they have a local agent who manages the property. Mr. Chu stated there were tenants in the property starting approximately 2011, who then advised that their cousin would be moving in and taking over rental of the property in late 2015 and signed a new lease. Mr. Chu stated their local agent had been visiting the property took photos, at which time there was no sign of any marijuana growing.

Mr. Chu stated they own approximately nine rental properties that Mr. Lee manages and they did not have any issues with marijuana cultivation at any of their other properties. Mr. Chu stated the property is currently vacant and boarded and they are still working to get everything fixed. Mr. Chu stated each time they find a new tenant an income and credit check is done by Mr. Lee and that he and his wife also review the information prior to approving a tenant.

Property owner Jenny Lin testified they assigned Aaron Lee as their agent to take care of their properties as they live in San Francisco. Mrs. Lin stated the tenants pay rent through direct deposit to their account. Ms. Lin stated Mr. Lee visits the properties twice a year.

Aaron Lee, local agent for the property, testified there was a tenant already living in the property and when the new tenants, their cousin, moved in a new rental application and lease was done. Mr. Lee stated the new tenants were living in the property as of approximately November 2016 and the lease was signed in January 2016 for a monthly rent of \$1,300. Mr. Lee stated the female occupant provided a paystub and a credit report and the male occupant worked in construction.

Mr. Lee testified he installed a fire extinguisher on the property in June 2017. He stated at that time he walked through the property with the tenant and at that time saw no evidence of marijuana being grown and had taken pictures of the bathtub and fire extinguisher. Mr. Lee stated after this incident occurred an inspection of all the properties was conducted, pictures were taken, and tenants advised that growing cannabis is prohibited.

FINDINGS OF FACT:

After examining the evidence submitted and arguments offered by City staff, the appellant and witness, if any; the owner's efforts, or lack thereof, to comply with the City Code; the staff time and costs incurred in investigating the violation; the extent, if any, to which the fine or penalty would impose a substantial economic hardship; the seriousness of the violation; the Hearing Examiner hereby makes the following findings:

- A. The Administrative Penalty was properly issued and served.
- B. The appellant employs a local property manager to take actively manage and inspect the properties.
- C. The property was inspected in June 2017 and there was no evidence of a cannabis grow operation at that time.
- D. After the cannabis growing operation was discovered, the property manager visited all properties owned by the appellant, took photos of every room in every property and gave each tenant a form specifically stating that growing cannabis is prohibited.

DECISION:

The Administrative Penalty issued on November 9, 2017, in the amount of \$83,000 shall be reduced to \$0.

IT IS SO ORDERED

Dated: March 27, 2018



Richard Shafer
Hearing Examiner

PAYMENT: ☐ **Applicable** ☒ **Not Applicable**

Make check payable to: City of Sacramento

Mail to: Code Compliance Division Attn: Hearing and Appeals 300 Richards Blvd., 3rd Floor Sacramento, CA 95811

APPEAL

If you desire to seek judicial review of the Hearing Examiner's decision, you must file a petition for judicial review with the Sacramento County Superior Court no later than the 90th day following the date of this decision. (*California Code of Civil Procedures Section 1094.5 & 1094.6*)

SPD Report #: 17-322928

Violation Address: 3855 Shining Star Drive